IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04/03/2003

CORAM

THE HONOURABLE MR. JUSTICE E. PADMANABHAN

W.P. NO. 17277 OF 1997

S. Kasi .. Petitioner

-Vs-

1. The Secretary/Correspondent
A.V.M. Marimuthu Nadar Higher
Secondary School
Villampatti, Sivakasi West
Virudhunagar District.

2. The Joint Director of School
Education (Secondary)
College Road
Nungambakkam
Chennai 6.

3. The Director of School Education
College Road
Nungambakkam
Chennai 6. .. Respondents

Petition filed under Article 226 of The Constitution of India praying this Court to issue a Writ of Certiorarified Mandamus as stated therein.

For Petitioners : Mr. Dhanabalan, for
M/s.Fenn Walter

For Respondents : Mr. Joseph Thatheus Jerome,
for R1
Ms. V.Velumani, AGP, for RR2 & 3

:ORDER

1. The writ petitioner, who was a teacher in the first respondent school, has come forward with the present writ petition praying for the issue of a writ of certiorarified mandamus to call for and quash the proceedings of the 3rd respondent dated 12.8.97 made in Mo.Mu. No.8 9965/D4/97 dated 12.8.97 and directed the respondents to re-employ the petitioner from 1.7.97 till the end of the academic year.
2. Heard Mr.Dhanabalan, learned counsel appearing for M/s.Fenn Walter, for

the petitioner, Mr.Joseph Thatheus Jerome, learned counsel appearing for the first respondent and Ms.V.Velumani, learned Additional Government Pleader appearing for respondents 2 and 3.

3. The contention advanced in this writ petition lies in a very narrow compass. The petitioner, who was employed in the first respondent school, has to demit office on 30.6.97 on his completing 58 years. The petitioner approached the respondent with a request that he be permitted to continue till the end of the academic year. The petitioner's request was considered by the respondents. The first respondent rejected. So also the 3rd respondent, after calling for the reports and remarks of the first respondent. The respondents declined to reemploy the petitioner till the end of the academic year as his service and conduct were not satisfactory and it is not in the interest of the schools as well. The first respondent management took the stand that it is not in the interest of the institution or school children to permit the petitioner to continue or to reappoint the petitioner till the end of the academic year. The school committee has also passed a resolution declining to accept the request of the petitioner for re-employment till the end of the academic year. Accepting the objections raised by the school committee of the first respondent school, the 3rd respondent passed the orders impugned.

4. It is contended by the learned counsel for the petitioner that the impugned proceedings of the 3rd respondent is arbitrary, illegal and liable to be quashed. It is also contended that the first respondent has acted vindictively and with malice, in that as a matter of right the petitioner is entitled for reappointment till the end of the academic year.

5. Per contra, Mr.Joseph Thatheus Jerome, learned counsel for the first respondent school contended that the petitioner is not entitled for re-employment as a matter of right and that the petitioner's conduct, his behaviour and his handling the classes and his earlier conduct also will disentitle him. The learned counsel for the first respondent refers to various earlier proceedings initiated against the writ petitioner and sought to justify the proceedings of the 3rd respondent. The learned Additional Government Pleader contended that the petitioner has neither a fundamental right nor a right to compel the respondents to re-employ him till the end of the academic year and if the petitioner satisfy the requirements, then the discretion has to be exercised in favour of the petitioner. In terms of the Government Orders, it is rightly pointed out that the conduct of the petitioner, his service and his attitude were taken into consideration and the respondents have rightly declined to re-employ the petitioner.

6. The points that arise for consideration in this writ petition is :-

"i) Whether the petitioner is entitled for re-employment automatically till the end of the academic year and as a matter of routine ?

ii) Whether the petitioner is entitled for re-employment on the facts of the case ?

iii) To what relief, if any ?"

All the above points could be considered together.

7. The first respondent is a private school. The employment in the first respondent school is governed by the provisions of The Tamil Nadu Private Schools Regulations Act and the Rules framed thereunder. The petitioner has got a right to continue in service till he completes 58 years.

8. The petitioner has no right to compel the respondents to reappoint him or

for re-employment till the end of the academic year as a matter of routine unless :-

a) His work and conduct are satisfactory ;

b) He is physically found fit for the service ; and that

c) No disciplinary proceedings are pending against him.

9. In the present case, it is vehemently and rightly contended by the first respondent school as well as the learned Additional Government Pleader that the petitioner has not satisfied anyone of the conditions and, therefore, he has been rightly declined re-employment. Reemployment, in terms of the Government Order, is at the discretion of the competent authority and re-employment is possible only when the petitioner satisfied the terms stipulated by the Government Order. The learned counsel for the respondents took the Court through the typed set of papers and contended that the work and conduct of the petitioner are not satisfactory and that there were disciplinary proceedings and the petitioner had never taken into consideration of the interest of the institution as well as the students for whose benefit, if at all, his re-employment is required.

10. The learned counsel for the petitioner repeatedly contended that the petitioner is entitled for re-employment automatically, but this Court is not persuaded to accept the said contention on the facts of this case as no case has been made out by the p etitioner. By his own conduct, character, service record and his failure to evince interest on the students academic career and the school, the petitioner has denied himself the re-employment.

11. In C.DAVID THAMPI DHAS VS. THE GOVERNING BOARD OF N.M.CHRISTIAN COLLEGE, MARTHANDAM & OTHERS reported in 1996 WLR 259, A.R.Lakshmanan, J., had occasion to consider an identical situation and while referring to G.O. Ms.No.281 dated 13.2.1981, and while following the judgment of the Division Bench in W.A. No.1179/93 S.SUNDARAM VS. SECRETARY, C.S.I. DIOCESE OF MADRAS, held thus :-

"12. ..... The Government Orders and the various instructions issued are binding on the private colleges receiving aid or grant. As per G.O.Ms.No.281, Education, dated 13.2.1981 and the proceedings of 4th respondent in Rc.No.48914/G.3/95 dated 14.4.1995, no proposal for re-employment should be with-held by the management as the Regional Joint Director concerned is the competent authority to decide the merit of the case. In the instant case, according to the learned counsel for the petitioner, the 3rd respondent by his order dated 22.1.1996 granted re-employment from 1.2.1996 to 31.5.1996 after considering the merits of the case and that the said order is binding on respondents 1 and 2 as they have to obey the said order and continue the petitioner in service till 31.5.1996.

13. In support of his contention, Mr.D.Sathasivan placed strong reliance on the judgment of a Division Bench of this Court in W.A. No.1 179 of 1993, etc., dated 6.9.1994 (S.SUNDARAM VS. SECRETARY, C.S.I. DIOCESE OF MADRAS). In that case, a common question that arise for consideration was as to whether the directions contained the Government Orders as to continuation of the teaching staff who attain the age of superannuation during the academic year till the end of that academic year is binding on the minority institutions like the present one. It was contended on behalf of the teachers that re-employment of such teachers till the end of that academic year is not a fresh appointment in as much as it is the very same teacher who is continued on re-employment conditions and not as a regular appointee. On the contrary,

it was contended on behalf of the minority institutions that the re-employment is not a continuity of service because as per the Government Order, on attaining the age of superannuation, pension has to be settled and the re-employment is not a continuity of service and it is a fresh appointment, which is not permissible in the case of minority institutions as it is the right of the management of the minority institutions to select and appoint teachers who fulfil the qualifications prescribed by the State Government and that the State Government has no authority to compel the minority institutions to obey its order which is contrary to the right guaranteed to them under Article 30 of the Constitution of India. The Division Bench has pointed out, that an analysis of the Government Orders would disclose that reemployment is for ensuring continuity of benefit of teaching from the same teachers to the students during the academic year, that it is a re-employment and not continuity of service on fulfilling the conditions that the work and conduct are satisfactory, that they are physically found fit for further service and that no disciplinary proceedings are pending against them. Therefore, it is clear, that it is the very same teacher, whose work and conduct are found to be satisfactory and who is physically found to be fit for further service and against whom no disciplinary proceeding is pending, is directed to be continued on re-employment basis during the remaining period of that academic year."

12. In S.KASI VS. A.V.M. MARIMUTHU NADAR HIGHER SECONDARY SCHOOL & OTHERS (W.A. No.249 & 297 of 1996) (DB), while emphasising the fact that interest of the students and institution has to be taken care of, if a teaching staff, who is not desirable to be continued has to be re-employed, it will have preposterous consequence. In that case, Kanakaraj, J. (as he then was), speaking for the Division Bench, after referring to the notifications issued by the Government and while following the judgment of the Supreme Court, held thus :-

"The Apex Court considered two questions, viz., (i) Whether reinstatement was justified ; and (ii) Whether the teacher was entitled to be paid salary or damages as ordered by the High Court. On the first question, the Apex Court observed :

"In educational institutions, the Court cannot focus only on the individual forgetting all else. The Court must have regard to varying circumstances in the academic atmosphere and radically changed position of the individual sought to be reinstated. The Court must have regard to interests of students as well as the institution. It is not unimportant to note that the respondent was out of teaching for over 25 years."

The said two pronouncements squarely applies to the facts of the present case and a complete answer to the claim of the writ petitioner.

13. On the facts of the present case, there is no doubt that the petitioner is not entitled for re-employment and the order impugned is not liable to be interfered as there are sufficient materials before the respondents to deny re-employment. The work, conduct of the petitioner, his services, attitude and interest shown on the institution and students are not satisfactory and there were other proceedings, which would show that the petitioner has not at all acted either in the interest of the student community or in the interest of the institution and, therefore, the petitioner, though he has been reinstated very recently, he cannot compel the respondents to re-employ him as a matter of routine. The petitioner has no right to compel re-employment and

such an extension of service he failed to earn.
14. In the foregoing circumstances, all the points are answered against the petitioner and in favour of the respondents. The petitioner has no right to compel the respondents to reappoint him unless he satisfies all the conditions prescribed in the Government Order and reappointment is not a matter of right or course or routine, but the teacher has to earn by his service, performance and interest shown in the welfare of the institution and the students as well.
15. In the result, this writ petition is dismissed. The parties shall bear their respective costs.

Index : Yes
Internet : Yes
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To

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